UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA

v.

G. T. BRANDON, President, Brandon Brothers Used Cars, Inc.

Paducah
C 76-0120 P(A)

ORDER—Entered and Filed January 27, 1977

This action having come on to be heard on the Show Cause Order of the Court and counsel being present in chambers on January 19, 1977, in Paducah, Kentucky, and the arguments of said counsel being heard and the Court being advised in the premises,

It Is Ordered that the defendant G. T. Brandon be and he is hereby ordered to appear before the Grand Jury to be held on February 8, 1977, at Paducah, Kentucky and to answer the following questions as to each document which is produced by him in response to a subpoena duces tecum served upon him on December 13, 1976. This order also applies to any future subpoenas or Grand Jury proceedings that might be held with respect to the defendant. The following questions shall be answered by the defendant and none others:

1. What paragraph of the subpoena served upon you on December 13, 1976, does this document represent?

2. Are these documents kept in the regular course of business of the Brandon Brothers Used Cars, Inc.?

3. Was it the regular course of business of Brandon Brothers Used Cars, Inc. to make a memorandum or record at the time of the transaction described in the document or within a reasonable time thereafter?

4. Please identify the document which has been handed to you and state whether it represents an activity conducted by the Brandon Brothers Used Cars, Inc.

5. What is the practice of Brandon Brothers Used Cars, Inc. with regards to the preparation of this document and to whom was responsibility delegated of preparing the document. Is it the regular practice of Brandon Brothers to prepare and keep the document and all similar documents in the regular course of defendant's business.

6. With respect to the identification of documents, the defendants shall identify each document as to what category it falls in and whether it is a business record, an invoice for billing, a report sent to a leasing company or a data compilation solely to keep a record purely for internal purposes.

Defendant shall not be required to answer any questions pertaining to individual entries made on any document which is produced to him.

(s) Charles M. Allen
United States District Judge

Dated: Jan. 27, 1977
Copies to counsel.

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 78-5396

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* *v.* G. T. BRANDON and BRANDON BROTHERS USED CARS, INC., *Defendants-Appellants.*	APPEAL from the United States District Court for the Western District of Kentucky.

Decided and Filed May 3, 1979.

Before: EDWARDS, Chief Judge, ENGEL, Circuit Judge, and PHILLIPS, Senior Circuit Judge.

EDWARDS, Chief Judge. This is an appeal from a conviction of the proprietor of a used car business, and the corporation on two counts of violating 15 U.S.C. § 1984 and § 1990(c) (1976) by the alteration of odometers on two automobiles.

The individual defendant received a 45-day sentence and a $5,000 fine on each count, with the sentences to be served concurrently. Before this court the appellants contend that Brandon, the owner of the business, suffered constitutional deprivations by the government violating his due process rights in questioning him before a federal grand jury. Both defendants also contend that their Fourth Amendment rights were violated when federal agents entered the used car premises and read the odometer figures, according to the agents, through the car windows. In addition, defendants argue that the two cars in relation to which the convictions occurred had been sold by Brandon

to a cousin, Jackie Brandon, before the agents observed the substantially reduced odometer mileage which established that the odometers had been altered.

Our inspection of the claimed due process abuse before the grand jury disclosed no such due process abuse as was involved in *United States* v. *Doss*, 563 F. 2d 265 (6th Cir. 1977), nor could we ascertain any prejudice involved in his answers to the six questions which the District Judge required him to answer. Appellant appears from the record to have somewhat erratically claimed the Fifth Amendment in relation to some questions and answered without compulsion as to others. As to this issue we find neither due process abuse nor prejudice to the fairness of Brandon's trial.

As to the Fourth Amendment claims, it appears that the District Judge correctly denied defendant's motion to suppress the odometer and vehicle identification numbers applicable to the two vehicles involved in these convictions. The agents' testimony in relation to them was undisputed. It was to the effect that they entered the used car lot, looked at the automobile, and were never asked to leave or forbidden to look in the windows. This was a commercial establishment open to the public, and the owner's expectations of privacy could not be comparable to those situations involving entrance into a home or breaking into an automobile. *See Cardwell* v. *Lewis*, 417 U. S. 583, 590 (1974).

As to defendants' defense, based upon the argument that the cars involved had already been sold to Brandon's cousin, Jackie, these claims were laid before the jury, along with government proofs that clearly indicated that the cars had been purchased by defendants and kept on the lot under the possession and control of defendants until the date of observation of the altered odometers. Under these facts the jury had a right to conclude that defendants were responsible for the alteration.

The judgments of conviction are affirmed.